[redacted]

NO. 73-1723

Supreme Court, U. S.
FILED
JUN 14 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

JOHN L. HILL, ATTORNEY GENERAL
OF THE STATE OF TEXAS
Appellant

v.

MICHAEL L. STONE, ET AL
Appellees

Appeal From the United States District Court For the Northern District of Texas, Fort Worth Division

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE CITY OF CORPUS CHRISTI TOGETHER WITH BRIEF AMICUS CURIAE

JAMES R. RIGGS
City Attorney

JAMES F. McKIBBEN, JR.
Asst. City Attorney
P.O. Box 9277
Corpus Christi, Texas
78408

ATTORNEYS FOR
CITY OF CORPUS CHRISTI

INDEX TO CITATIONS

Cases:

City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 Sup. Ct. 1990 13

Markowsky v. Newman, 136 S.W.2d 808 (Tex. 1940) 13

Montgomery Independent School District v. Martin, 464 S.W.2d 638 (Tex.1971) . 12

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-1723

JOHN L. HILL
ATTORNEY GENERAL OF THE STATE OF TEXAS

v.

MICHAEL L. STONE, ET AL

MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE ON BEHALF OF THE
CITY OF CORPUS CHRISTI
TOGETHER WITH BRIEF AMICUS CURIAE

The City of Corpus Christi, Texas, respectfully moves for leave to file a Brief Amicus Curiae. The City of Corpus Christi makes this request under Supreme Court Rule 42,4. as a political subdivision of the State of Texas.

The Movant, City of Corpus Christi, is a municipal corporation duly incorporated and existing under the laws of the State of Texas, operating under a home rule Charter in Nueces County, Texas.

The Movant is directly interested because there is an identical question of law and fact in common with a case filed against the City of Corpus Christi before The United States District Court, Southern District of Texas, Corpus Christi Division, styled William O. Harrison, Jr., et al v. The City of Corpus Christi, Texas, et al, Cause No. 74-C-60.

Movant would show this Honorable Court that the same questions of law exist as to whether its residents who fail to render their property for City taxation possess a right to have their votes in bond elections counted equally with votes of rendering, resident property owners. Further,

that the legality of Article 6, Section 3, and Section 3A, of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code are in question and a portion of Article VII, Section 10 of the Charter of the City of Corpus Christi, Texas, is in question, all of which provisions purport to restrict the right to effectively vote in bond elections to persons who own property which has been rendered for taxation.

Movant would further show this Honorable Court that Movant attempted to intervene in the case presently under consideration by this Court but such intervention was not allowed by the three-Judge Trial Court because, among other unstated reasons, it was not timely filed. In addition to denying the Movant's Motion to Intervene the said Trial Court made its judgment prospective in nature, except as to a City of Fort Worth bond issue only, thus disallowing the Movant the opportunity

to make the judgment applicable to itself.

Movant held an election on the 9th day of December, 1972, on a City Convention Center bond proposition which reflects the following results of that election:

Property owners - Votes for	7,705
Property owners - Votes against . .	7,810
Nonproperty owners - Votes for . .	1,601
Nonproperty owners - Votes against	820
Total for	9,306
Total against . .	8,630

The Movant, City of Corpus Christi, would show that the City Council of the City of Corpus Christi would, but for the complaint of Texas Constitutional and Statutory provisions, which are contested in the Michael L. Stone case, attempt to issue and sell bonds approved by the voters of the City of Corpus Christi on the 9th day of December, 1972, in said proposition.

It is thus apparent that the resolution of the issue involved in this case,

which concerns the validity of the complained of Texas Constitutional and Statutory provisions, is of vital interest to the City of Corpus Christi. The case of John L. Hill v. Michael L. Stone, et al, pending in this Court on direct appeal from a three-Judge Court decided that the complained of Texas Constitutional and Statutory provisions were unconstitutional violations of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Hence, we seek leave to place before the Court a statement of our reasons for believing that this Honorable Court should be cognizant of the William O. Harrison, Jr. v. The City of Corpus Christi case as it relates to the case presently before this Court on the direct appeal of John L. Hill v. Michael L. Stone, et al. A

Brief containing such presentation is tendered with this Motion.

For each and all of the foregoing reasons, the Movant's Motion should be granted.

Respectfully submitted,

JAMES R. RIGGS
City Attorney

JAMES F. McKIBBEN, JR.
Assistant City Attorney

James F. McKibben, Jr.

ATTORNEYS FOR THE
CITY OF CORPUS CHRISTI

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-1723

JOHN L. HILL
ATTORNEY GENERAL OF THE STATE OF TEXAS

v.

MICHAEL L. STONE, ET AL

BRIEF OF AMICUS CURIAE
THE CITY OF CORPUS CHRISTI

QUESTIONS PRESENTED

This case presents questions regarding the constitutionality of State and City laws which may restrict suffrage and bond elections to persons who have made available for taxation some item of real, personal, or mixed property. The questions

presented necessarily include the following:

1. Whether the requirement of rendering property by the electorate is necessary to promote the State's articulated interest.

2. Whether the interest is compelling.

INTEREST OF AMICUS CURIAE

The City of Corpus Christi is in a situation comparable to the City of Fort Worth. Indeed, if any difference exists between the two cases, the difference is that the City of Corpus Christi would, but for the Texas Constitutional provisions and Statutory law, seek to have the Attorney General approve and certify the bonds for sale.

The City of Corpus Christi has pending in the Southern District of Texas a case involving the same questions of fact and law as is before the Court in this case. The City of Corpus Christi filed a Motion

To Intervene in the Michael L. Stone case while it was before the three-Judge Federal Court sitting at Fort Worth. The Motion to Intervene was denied because, among other unstated reasons, the Court stated it was not timely filed. Subsequent to the Motion to Intervene being denied, a suit was filed requesting the convention of a three-Judge Federal Court in the Southern District of Texas to decide substantially the same issues as were decided in the Michael L. Stone case. The opinion of the Michael L. Stone case was prospective in nature as to all entities other than the City of Fort Worth, thus the ruling would not be applicable to the situation of the City of Corpus Christi. In the Michael L. Stone case a majority of rendering property owners rejected the proposal to issue library bonds, but the nonrenderers approved it by a three-to one margin. Adding together the votes of both groups showed that a majority of all

the voters participating favored issuing the library bonds. The net result was that library bonds could be sold only if the nonrenderers were constitutionally entitled to vote despite the contrary Texas and Fort Worth laws. The City of Corpus Christi case has substantially the same fact situation in that a majority of the rendering property owners rejected the proposal to issue bonds for a Convention Center, but the nonrenderers approved it by a two-to-one margin. Adding together the votes of both groups showed that a majority of all the voters participating favored issuing the Convention Center bonds. The bond election held on the 9th day of December, 1972, reflected the following results of the election, as to the Convention Center proposition:

Rendering property owners -
Votes for 7,705

Rendering property owners -
Votes against . . . 7,810

Nonrendering voters -
Votes for 1,601

Nonrendering voters -
Votes against . . . 820

Total for 9,306

Total Against . . . 8,630

The net result is that the Convention Center Bonds can be sold only if the non-rendering voters were constitutionally entitled to vote and have their vote counted equally with rendering property owners despite Texas and Corpus Christi law to the contrary. The question before the Fort Worth three-Judge Federal Court in the Michael L. Stone case is the same question which is before the Corpus Christi Court, to-wit: whether the provisions in question are consistent with the principles of equal protection.

ARGUMENT

The questions to be resolved by this Court turn on whether the State interest is compelling in nature. An interest to be considered is limiting the ballot to those who have a financial stake in the election's outcome. This interest is based on notions of fairness: Those whose taxes will service the bonds should be the only ones deciding whether the debt is worth undertaking. To permit nonrenderers a "free ride" would be tantamount to depriving the renderers of their property without due process, and would at least constitute preferential treatment.

The other interest advanced is the necessity of encouraging the citizens to render their property so that the public treasury will be fortified by an efficiently collected property tax. See Montgomery Independent School District v.

Martin, 464 S.W.2d 638 (Tex. 1971); Markowsky v. Newman, 136 S.W.2d 808 (Tex. 1940).

The case of City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 Sup. Ct. 1990, and the ruling therein is distinguishable from the Texas situation in that more than half of the debt service requirements were to be satisfied from taxes paid by nonproperty owners in the Arizona case and by contrast, under the Texas law, bonds would be serviced entirely by property taxes. The City of Corpus Christi is concerned with the issues presented and the outcome of this case because its result should be decisive of the questions presented in the City of Corpus Christi case, however, since the Michael L. Stone order was prospective in nature and since the bond election of the City of Corpus Christi was held prior

to that opinion being rendered, but after the Fort Worth bond election, the City of Corpus Christi would be put to the undue hardship and burden of continuing its case through the Southern District of Texas, thence to this Honorable Court, in order to receive like treatment of that of the City of Fort Worth. If this case were merely affirmed on appeal without a written opinion making allowances for the City of Corpus Christi to be included in the judgment of this Honorable Court, the City of Corpus Christi would be done grave injury. In the alternative, this hardship could be relieved by allowing a consolidation of the Fort Worth case and the City of Corpus Christi case so that they may be rendered together.

CONCLUSION

The three-Judge Federal Court, convened in the Fort Worth Division of the

Northern Division of Texas, could within their discretion have allowed the intervention of the City of Corpus Christi, thus preventing extensive and expensive litigation, but failed to do so. The Fort Worth Court could also have made its judgment include the period subsequent to the bond election held in Fort Worth which would have included the Corpus Christi situation, but they failed to do so. If this Court should decide to make its own full determination on the merits of the issues raised, it is prayed by the City of Corpus Christi that this Court's order would extend to the Corpus Christi situation or, in the alternative, that this Court would allow a consolidation between the Fort Worth and the Corpus Christi cases. Unless this Court makes such determination on the merits of the issues raised by the appeal, the case should be

remanded to the Fort Worth three-Judge Federal Court with instructions to that Court to give a full and prompt review of the position of the City of Corpus Christi.

Respectfully submitted,

JAMES R. RIGGS
City Attorney

JAMES F. McKIBBEN, JR.
Assistant City Attorney

James F. McKibben, Jr.

ATTORNEYS FOR THE
CITY OF CORPUS CHRISTI
P. O. Box 9277
Corpus Christi, Texas 78408

CERTIFICATE OF SERVICE

A copy of the above and foregoing Motion for Leave to File Brief Amicus Curiae on Behalf of the City of Corpus Christi Together With Brief Amicus Curiae has been furnished to counsel for Appellees by depositing same in the United States Mail, postage prepaid, addressed to Marvin Collins, 702 Burk Burnett Building, Fort Worth, Texas 76102; to S. G. Johndroe, 1000 Throckmorton Street, Fort

Worth, Texas 76102, attorney for the City of Fort Worth; and Larry F. York, Executive Assistant Attorney General, Box 12548, Capitol Station, Austin, Texas, 78711, attorney for John L. Hill, this 13TH day of June, 1974.

James F. McKibben, Jr.

JAMES F. McKIBBEN, JR.
Assistant City Attorney